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RUEHNAG/AMCONSUL NAGOYA PRIORITY 4689  
RUEHOK/AMCONSUL OSAKA KOBE PRIORITY 9775  
RUEHKSO/AMCONSUL SAPPORO PRIORITY 6709  
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TAGS: [PHUM](#) [KCRM](#) [KOCI](#) [PREL](#) [JA](#)

SUBJECT: CHILD PORNOGRAPHY IN JAPAN: FEBRUARY 6 ROUNDTABLE WITH THE DIET

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¶1. Summary: The Japanese Diet may soon consider criminalizing the simple possession of child pornography, U.S. delegates to the G8 Lyon-Roma meeting in Tokyo learned during a meeting with six Diet members arranged by Embassy Tokyo. Although most of the Diet participants in the meeting support revising Japan's child pornography laws, one vocal opponent articulated the opposing viewpoint: that criminalizing simple possession is unnecessary and would compromise the right to privacy. Using examples from the U.S. experience, the U.S. representatives addressed these points, but the Diet member appeared unconvinced, and many others reportedly share his view.

¶2. The fight against child pornography must transcend borders, Deputy Assistant Secretary of State for International Narcotics and Law Enforcement Affairs Elizabeth Verville told the Diet members. Department of Justice Child Exploitation and Obscenity Section (CEOS) Chief Andrew Oosterbaan, State Department Attorney-Adviser David Buchholz, and DAS Verville were in Tokyo to attend a meeting of the Group of Eight (G8) Lyon-Roma group, which has addressed child pornography issues for more than ten years. In addition to sponsoring an image database that is now used by Interpol to help rescue children who are victims of sexual abuse, the G8 Lyon-Roma group prepared the G8 Justice and Home Affairs Ministers Declaration on Reinforcing the International Fight against Child Pornography, issued in May 2007. The United States is committed to strengthening its laws to fight child pornography, DAS Verville continued, noting that in signing the declaration, the G8 Ministers pledged to ensure that their States have strong anti-child pornography legislation. Acknowledging recent statements by the Prime Minister and Justice Minister calling for revision of Japan's child pornography laws, DAS Verville invited the Roundtable participants to discuss how the United States and Japan could work together to better protect the world's children.

"Child Pornography" fails to describe this unbearable crime  
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¶3. The prevailing sentiment worldwide is that child pornography images themselves are abusive, Verville told the Diet members. The exploitation does not end with the production of the images. The term "Child pornography" does not capture the horror of the crime, added Embassy Tokyo Political Minister Counselor. Calling the images "Child Rape" would be more accurate. We must refocus our

efforts on spreading this consciousness. People who possess these images profit financially or sexually from the illegal act, and contribute to the global demand for sexual abuse of children.

Opponent of criminalizing possession claims that existing laws are sufficient

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¶4. Critics of Japan's child pornography law do not understand it, said Democratic Party of Japan (DPJ) Lower House Representative Yukio Edano. Japanese law criminalizes possession for distribution, transportation, display, or sale. As one of the creators of the child pornography law, Rep. Edano expressed confidence that any child pornography crime can be investigated under the existing legal framework. The law is strict, including all aspects of internet trade and criminalizing distribution to even one person. Statements by police that the lack of a law criminalizing simple possession prevents effective investigation are "lies," Rep. Edano claimed. Any failure by Japan to suppress the spread of child pornography is due to ineffective police investigation, not to incomplete legislation.

¶5. Child pornography crimes are getting worse in spite of existing laws, responded CEOS Chief Oosterbaan. Not only is the number of offenders increasing, but the violence of the crimes is abysmally worse than it was ten years ago. Most child pornography victims today are prepubescent, including infants and toddlers who are being inflicted with the "worst kinds of abuse imaginable." Psychologists are saying that viewing child pornography starts a cycle of stimulation that frequently ends with the sexual abuse of a real child. In addition to the influence of the images themselves, the community a person must join to obtain child pornography images and videos has a perverse influence. The exposure to these networks of like-minded individuals leads an offender to think that it is "normal" to have sexual feelings about a child. U.S. prosecutors are increasingly concerned not only about the children depicted in these images and videos, but also about children who come in contact

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with persons viewing child pornography. Oosterbaan asserted that in view of the growing evidence indicating a link between using child pornography and committing contact sexual abuse offenses, mere possession of child pornography is a crime as serious as any other child pornography crime because of the risk an offender presents to children who come in contact with him. Simple possession must be criminalized to secure the safety of our children and maintain an adequate enforcement regime, Oosterbaan explained.

¶6. Criminalizing simple possession is critical to a criminal investigation, added Embassy Legal Attach. FBI investigations start with matching the IP addresses of persons downloading the highest volume of images and videos with names. Investigations are then opened against those persons in "high risk" positions: teachers, doctors, bus drivers, etc. These investigations often turn up evidence of crimes besides simple possession, including contact sexual abuse offenses and/or identifying other distributors of child pornography. Investigators would never learn of these other crimes if it were not for the access to the names of downloaders that the criminality of simple possession allows. Embassy Legal Attach and other U.S. agencies have provided lists of the IP addresses of child pornography downloaders to their Japanese counterparts, but the Japanese police say that they cannot take action because simple possession is legal. Rep. Edano interjected, repeating his assertion that the police are lying and that the problem is that they are not working to enforce existing laws.

Child Pornography and the Right to Privacy

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¶7. Japanese police cannot be trusted with the increased search and seizure powers that criminalizing simple possession would grant, Rep. Edano continued. In a country where confessions have been given too much weight by courts and police interrogation methods have regularly come under fire, criminalizing simple possession would compromise the human rights of private citizens. In addition, innocent people could be punished for having child pornography placed on their computer by a virus or a hacker or placed in their briefcase without their knowledge.

¶8. The United States is also concerned about the rights of the individual, replied Verville. In the U.S. experience, criminalizing simple possession has not compromised these rights. Safeguards can be built into the laws, added Oosterbaan. In the United States, the burden of proof is on the prosecutor to demonstrate that someone "willingly and knowingly" possessed the images or videos, which can be very difficult. When Komeito Rep. Kazufumi Taniguchi asked whether parents taking innocent pictures of their children on the beach would be committing a crime, Oosterbaan explained that the legal definition of child pornography must be drawn carefully and specifically to avoid criminalizing harmless activity. In the U.S., the law requires that an image such as that described by Rep. Taniguchi depict the "lascivious" exhibition of the genitals to fall under the definition of child pornography, Oosterbaan advised.

To revise or not to revise: Diet members weigh in  
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¶9. As one of the authors of the original legislation, Liberal Democratic Party (LDP) heavyweight Rep. Sadakazu Tanigaki confirmed that there were very real concerns about police abuse when the bill was written. But the situation has changed during the last ten years, especially with the growth of the Internet, and it is now difficult to maintain the same arguments, Rep. Tanigaki stated. He indicated that more discussion is warranted. Another sponsor of the original child pornography law, LDP Rep. Mayumi Moriyama, indicated that the 1999 law was a compromise necessary to achieve legislation that could be enacted, but suggested as well that the Internet represented a new development that warrants review. Japanese standards must meet international standards, added Komeito Rep. Kaori Maruya. In addition to criminalizing simple possession and revising the definition of child pornography, measures must be enacted to define the responsibility of internet service providers (ISPs). In response to Rep. Maruya's observation that more than 60 percent of the servers hosting child pornography are in the United States, Oosterbaan emphasized the need for a law mandating that ISPs report illegal content they find on their servers to authorities. DPJ Rep. Koichiro Gamba expressed his support for criminalizing simple possession, with the condition that the law must be written to protect victims of maliciously planted images.

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¶10. Comment: Rep. Tanigaki's active support is significant. The first step in criminalizing simple possession will be for each party to create a project team to review the issue. As the Chairman of the LDP Policy Affairs Research Council, Rep. Tanigaki is the decision maker for creating project teams. Komeito has already formed its team with Rep. Maruya at the head. Rep. Maruya was the most vocal proponent at the meeting of criminalization of simple possession. The DPJ has also created a project team, with Rep. Miho Takai as its head. The DPJ's Rep. Edano's main arguments seem to contradict themselves: saying that police are not exercising their powers under the existing legislative framework, and at the same time saying that the police would abuse their powers under a revised law. Whether or not his opinion reflects the thinking of the greater DPJ, he is an influential opponent.

¶11. Present at the meeting were:

Japanese Participants:

- LDP Rep. Sadakazu Tanigaki, UNICEF Parliamentarian League Chairman, LDP Policy Research Council Chairman, Tanigaki Faction leader.
- LDP Rep. Mayumi Moriyama, architect of the enactment of the anti-child pornography law. Her former posts include Chief Cabinet Secretary and Minister of Justice.

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- DPJ Rep. Yukio Edano. The Diet's most vocal opponent of criminalizing simple possession, Rep. Edano actively opposes any legislation that might negatively impact human rights.
- DPJ Rep. Koichiro Gamba, Chairman of Lower House Special Committee on Youth Issues.
- Komeito Rep. Kaori Maruya, Chair of Komeito Project Team for reviewing the anti-child pornography law.

-- Komeito Rep. Kazufumi Taniguchi, member of Komeito Project Team  
for reviewing the anti-child pornography law.

U.S. Participants:

-- Elizabeth Verville, Deputy Assistant Secretary, Bureau for  
International Narcotics and Law Enforcement Affairs (INL), DOS  
-- Mike Meserve, Embassy Political Minister Counselor  
-- Drew Oosterbaan, Chief, Child Exploitation and Obscenity Section,  
DOJ  
-- David Buchholz, Attorney-Adviser, Office of the Legal Adviser,  
DOS  
-- Larry Futa, Embassy Legal Attach  
-- Marc Knapper, Embassy Political Section Deputy  
-- Negah Angha, Foreign Affairs Officer, DOS/INL  
-- Scott Hansen, Embassy Political Officer  
-- Fumiko Gregg, Embassy Interpreter

112. This cable has been cleared by Washington participants.